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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Street Address: 355 Deadmore Street, Abingdon, Virginia 24210
Mailing Address: P.O. Box 1688, Abingdon, Virginia 24212-1688
Fax: (276) 676-4899
www.deq.state.va.us

Robert G. Burnley
Director

Michael D. Overstreet
Regional Director
(276) 676-4800

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Hunter Asphalt, Inc. Registration No. 10338

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§10.1 – 1301, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and the Hunter Asphalt Company for the purpose of resolving certain violations of State Air Pollution Control Law and associated Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Hunter Asphalt, Inc., Hwy. 460 & 19, Pounding Mill, VA 24637, a corporation licensed to do business in Virginia, its affiliates, partners, subsidiaries, and parents.

SECTION C: Findings of Facts and Conclusions of Law

1. Hunter Asphalt, Inc. owns and operates a hot mix asphalt located on Hwy. 460 & 19, Pounding Mill, Virginia.
2. Hunter Asphalt, Inc. was issued a Synthetic Minor NSR permit to operate the facility on January 6, 2003.
3. Permit Condition No. 15 of Hunter Asphalt, Inc.'s permit dated January 6, 2003 states "Visible Emission Limit - Visible emissions from the aggregate storage and handling, asphalt heater, and exhaust of the fabric filter serving the aggregate drying, hot screen, and mixing processes, shall not exceed 20 percent opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 60 percent opacity as determined by the EPA Method 9 (reference 40 CFR 60, Appendix A). This condition applies at all times except during startup, shutdown, and malfunction". (VAC 5-40-80 and 9 VAC 5-8-850)
4. Permit Condition No. 11 of Hunter Asphalt, Inc.'s permit dated January 6, 2003 permit states "Fuel Certification - The permittee shall obtain a certification from the fuel supplier with each shipment of distillate oil. Each fuel supplier certification shall include the following: a. The name of the fuel supplier; b. The date on which the distillate oil was received; c. The volume of distillate oil delivered in the shipment; d. A statement that the distillate oil complies with the American Society for Testing and Materials specifications for numbers 1 or 2 fuel oil; and e. The sulfur content of the distillate oil. (9 VAC 5-80-850)
5. 9 VAC 5-170-160.A - (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.
6. 9 VAC 5-40-80 (Standards For Visible Emissions) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in: "Unless specified otherwise in this part, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any visible emissions which exhibit greater than 20% opacity, except for one six-minute period in any one hour of not more than 60% opacity. Failure to meet the requirements of this section because of the presence of water vapor shall not be a violation of this section."
7. On July 19, 2004, DEQ-SWRO Inspector Don Hilt performed an inspection on Hunter Asphalt including an EPA Method 9 observation on the asphalt plant baghouse. The VEE indicated an opacity exceedance.
8. During the 7-19-04 inspection, a review of the fuel shipment receipts indicated that the certifications did not contain the sulfur content or ASTM specification numbers.

9. On July 26, 2004, DEQ sent a Notice of Violation Letter (NOV No. 07-07-04), for a permit violation, by Certified Mail-Return, to Hunter Asphalt, Inc. The letter informed the Company that DEQ had reason to believe that a violation of Air Pollution Law and Regulation 9 VAC 5-40-80 and 9 VAC 5-80-850 G. had occurred.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders the Company and the Company agrees to pay a civil charge of \$3659.00 within 30 days of the effective date of this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

For purposes of properly identifying its payment, the Company shall include with the check, a notation of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.

2. The Company shall submit an acceptable Corrective Action Plan, including milestone dates, detailing actions that Hunter Asphalt, Inc. has taken and/or plans to take to correct the current problem and actions implemented to prevent future noncompliance with above referenced regulations. This plan and schedule shall be submitted within 30 days of signing of this document and is subject to the approval of the Director, DEQ-SWRO. If the Corrective Action Plan does not correct the opacity problem a stack test for particulate matter shall be performed by Hunter Asphalt, according to EPA Method 5, within 60 days of notification from DEQ that the Corrective Action Plan has not corrected the opacity problem.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hunter Asphalt, Inc. for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's permit dated January 6, 2003.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional subsequent or subsequently discovered violations; (2) seeking subsequent remediation of Hunter Asphalt, Inc. as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, Hunter Asphalt, Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Hunter Asphalt, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

6. Hunter Asphalt, Inc. declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by Hunter Asphalt, Inc. to comply with any material terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Hunter Asphalt, Inc. shall be responsible for failure to comply with the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Hunter Asphalt, Inc. must show that such circumstance resulting in noncompliance was beyond its control and not due to a lack of good faith or diligence on its part. Hunter Asphalt, Inc. shall notify the Director of the Southwest Regional Office of DEQ in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

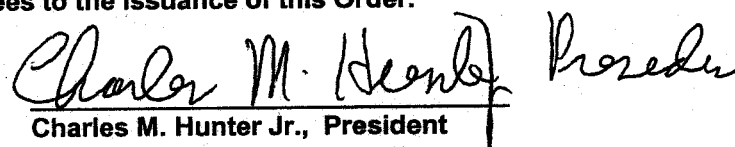
Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.
10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Hunter Asphalt, Inc. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Hunter Asphalt, Inc. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Hunter Asphalt, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, the Hunter Asphalt, Inc. voluntarily agrees to the issuance of this Order.

And it is ORDERED this day of August 26, 2004


Robert Burnley, Director
Department of Environmental Quality

Hunter Asphalt, Inc. voluntarily agrees to the issuance of this Order.


Charles M. Hunter Jr., President
Hunter Asphalt, Inc.

Date: 08/25/04

Commonwealth of Virginia

City/County of Tazewell

The foregoing document was signed and acknowledged before me this 25th day of August, 2004 by Charles M. Hunter on behalf of Hunter Asphalt, Inc.

Date: 08/25/04


Notary Public

My commission expires: January 31, 2005